



**The Copyright Committee of the IP Section of the State Bar**  
**In-person & telephonic Copyright Committee Roundtable**

**MOVIES, VIDEO GAMES, MUSIC, AND CELEBRITIES**

**Speaker: Dr. Michael A. Einhorn**

**Date: Tuesday, December 13, 2005**

**Networking/Lunch: 11:45 a.m. Program: 12:00-2:00 p.m.**

**Location: State Bar of California**

**180 Howard Street**

**San Francisco, CA**

Dr. Einhorn will speak on a number of practical valuation issues that have arisen in his personal work and in the case law. With regard to valuation in films and video games, the talk will discuss the importance of variable and fixed costs in the earning potential of a copyrighted work and the relevance of each in determining unjust enrichment. Valuation concepts also implicate prejudgment interest and taxes. Serious differences in measured damages may result if costs are misclassified.

For music copyrights, the talk will consider how plaintiffs have recovered damages from unauthorized use of music in underlying sound recordings and musical compositions which must be carefully distinguished. Valuation also involves a careful resolution of Fixed and variable costs, as well as related artist and publisher royalties. Furthermore, it is necessary to determine techniques for apportioning album value over individual tracks that may have different abilities to promote the sale of the album. The talk also considers the rarely examined issue of copyright violations in live events and demonstrates that substantial payoffs may be possible if live concert revenues can be recovered.

As a third topic, the speaker will apply valuation techniques to the future earnings of literary and artistic properties in author and composer estates and transfers. There are two general valuation strategies. Survivor curves estimate future royalties from a copyrighted work by extrapolating into the future an historic trend based on previous sales. Benchmarking techniques forecast sales of revenue-generating works based on histories of comparable works in the catalog that have neared the end of their earnings potential.

Finally, the talk will consider issues in publicity rights. Three careful distinctions in valuation are necessary. First, publicity rights should be valued separately for merchandising and advertising use of a celebrity's persona. Second, valuations should also distinguish between the actual worth of the name and the related worth of the performance that is sometimes contracted in an advertisement. Third, valuations should be distinguished by the expected circulation of the particular media, as well as the size and nature of the offending placement. Using practical examples, the author shows that rights can be valued incorrectly if the wrong paradigm is applied.

**Biography: Michael A. Einhorn** is a leading economic expert active in the areas of intellectual property, media, entertainment, licensing, valuation, and antitrust. He is a Senior Advisor to CONSOR Intellectual Asset Management, a member of the Gerson Lehrman Group, the author of the book *Media, Technology, and Copyright: Integrating Law and Economics* (Edward Elgar Publishers), and an Adjunct Professor of Law at Rutgers University.

In media and intellectual property, he has consulted to inventors, publishers, songwriters, composers, cartoonists, sculptors, photographers, architects, artists, record labels, movie producers, and screenwriters. His consulting and testifying work in valuation of copyright and publicity rights has involved Walt Disney Records, Fox Film Corp., Activision, RIAA, Universal Music Publishing, Paxson Productions, eUniverse, Pearson Education, Broadcast Music, Inc., SESAC, Major Bob Music, Random House, Harper Collins, Melina Kanakaredes, Rosa Parks, Arnold Schwarzenegger, and Marlon Brando. Issues have involved valuation, music rights, fair use, data mining, royalties, damages, hyperlinking, file-sharing, and digital rights management.

Michael Einhorn received a B.A. from Dartmouth College and a Ph.D. in Economics from Yale University. He taught at Rutgers University and worked at the U.S. Department of Justice, Broadcast Music, Inc., and Bell Laboratories. He served as an Adjunct Professor of Communications and Media in the Graduate School of Business at Fordham University and a Research Fellow and Adjunct Professor at Columbia University. He is also a frequent lecturer in Continuing Legal Education programs.

**Question about the program, contact the committee Co-chairs: Barbara Friedman, [bfriedman@hansonbridgett.com](mailto:bfriedman@hansonbridgett.com), or Matt Neco, [matthew.neco@gmail.com](mailto:matthew.neco@gmail.com)**

Registration is \$25.00, which also includes lunch. Others are invited to attend by conference call. 2.0 hours of CLE credit will be offered. Registration is required whether attending in person or via telephone. Please register online by visiting [www.ipsection.org](http://www.ipsection.org) or you can register via fax by completing the attached registration form and mail or fax to Program Registrations at The State Bar of California. See the registration form for more information.

For registration information, call 415-538-2508. For Section information, call 415-538-2375. The Intellectual Property Law Section of the State Bar of California is a State Bar of California approved MCLE provider.

## REGISTRATION FORM

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	<b>VIA Telephone</b>

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